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FILED

2003 AUG -8 PM 6:33

CLERK  
U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
W.R. GRACE & CO., <u>et al</u>	)	Case No. 01-01139 (JKF)
	)	(Jointly Administered)
Debtors.	)	
	)	Claim No. 00006089
	)	
	)	

**RESPONSE TO DEBTORS' SECOND OMNIBUS  
OBJECTION TO CLAIMS (NON-SUBSTANTIVE)**


On behalf of claimant, Michael Charles Wagner (Claim No. 00006089), his attorney, Tom L. Lewis of Lewis & Slovak, P.C., objects to Debtors' Second Omnibus Objection to Claims (Non-Substantive), dated July 21, 2003, and received August 7, 2003, on the basis of improper notice and further responds as follows:

1. Claimant's claim is with respect to asbestos contamination from a Grace product in or on the property.
2. Claimant's claim is based upon the findings of the U.S. Environmental Protection Agency in its Administrative Record and supplement, test results, and other documentation, as well as information obtained from other sources, including but not limited to local and national news reports, articles and meetings.
3. Claimant consented to the production and release of supporting documentation, in the possession of the U.S. Environmental Protection Agency, to Grace and Grace's representatives at the time of submission of claim in March, 2003.
4. Claimant has attached supporting documentation, which was not available at the time the proof of claim was filed.

**RESPONSE TO DEBTORS' SECOND OMNIBUS  
OBJECTION TO CLAIMS (NON-SUBSTANTIVE) - 1**

Respectfully submitted this 8th day of August, 2003.

Lewis & Slovak, P.C.

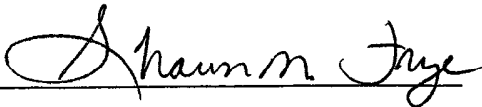
By:   
\_\_\_\_\_  
Tom L. Lewis  
P.O. Box 2325  
Great Falls, MT 59403  
(Attorneys for Claimant)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and legible copy of the foregoing Response to Debtors' Second Omnibus Objection to Claims (Non-Substantive) was served on the 8th day of August, 2003, by fax and by first class mail, upon the following:

James W. Kapp III, Janet S. Baer and Christian J. Lane  
Kirkland & Ellis, LLP  
200 East Randolph Drive  
Chicago, IL 60601

Scott E. McFarland  
Pachulski, Stang, Ziehl, Young, Jones & Weintraub, P.C.  
919 North Market Street 16th Floor  
Wilmington, DE 19801

  
\_\_\_\_\_

I - 01501

☒ Soil samples collected

2/02

**LIBBY ASBESTOS PROJECT**  
**Contaminant Screening Study**  
**Primary Structure and Property Assessment Information**

Field Logbook No.: 100090 Page No.: 129 Site Visit Date: 8/15/02  
 Address: 3696 2nd St. Ext. W Structure Description: House  
 Occupant: Michael C. Wagner Phone Number: 203-4238  
 Owner (if different than occupant): N/A Phone Number: N/A  
 Sampling Team: Shawn Oliveira CAM, AIMEE Vesell CAM  
 Field Form Check Completed by (100% of forms): AIMEE VESSELL CAM  
 Screening Field Check Completed by (2% of forms): \_\_\_\_\_

Data Item	Value
<b>HOUSE ATTRIBUTES</b>	
Property Description	<input checked="" type="radio"/> Residential <input type="radio"/> Industrial <input type="radio"/> Commercial
Surrounding Land Use	<input checked="" type="radio"/> Residential <input type="radio"/> Industrial <input type="radio"/> Commercial School <input type="checkbox"/> Mining <input type="checkbox"/> Other: _____
Year of Construction	<u>1960</u> <input type="checkbox"/> Unknown <input type="checkbox"/>
Square Footage	<u>1040 ft<sup>2</sup></u>
Construction Material	<input checked="" type="radio"/> Wood frame <input type="radio"/> Masonry/Stone Other: _____
Number of Floors Above Ground	<input checked="" type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 Other: _____
Number of Rooms Per Floor Above Ground	1: <u>5</u> 2: _____ 3: _____ Other: _____
Basement	<input checked="" type="radio"/> Yes <input type="radio"/> No <span style="float: right;">Pew</span>
Heating Source	Wood/Coal <input type="checkbox"/> Electric <input type="checkbox"/> Propane/Gas <input type="checkbox"/> Other: <u>oil</u>
Heat Distribution	<input checked="" type="radio"/> Forced air <input type="radio"/> Radiant Other: _____

CSS INFORMATION FIELD FORM (continued)

Address: 3691a 2nd St. Ext. W

ID: 20652

Data Item	Value	Notes
<b>OCCUPANT INFORMATION</b>		
Number of Adults/Employees	0 1 <u>(2)</u> 3 4 5-15 16-20 21-30 >30	
Number of Children	<u>(0)</u> 1 2 3 4 Other: _____	
Years at Location	<1 1-5 5-10 10-15 <u>&gt;15</u>	Since 1960
Was the residence/building remodeled?	<u>(Yes)</u> No If yes, When (years): <2 2-5 <u>&gt;5</u> Where: Attic Living Areas Garage Basement Other: _____	Re insulated with fiberglass, both attic and walls. 1/4" fiberglass present initially
Has resident/business purchased any Libby vermiculite materials from W.R. Grace in the past?	Yes <u>(No)</u>	
Has the property at this location been used for a for-profit enterprise of distributing, treating, storing, or disposing of Libby vermiculite?	Yes <u>(No)</u>	
Are there any known areas of exposed vermiculite?	Yes <u>(No)</u> If yes, Where: Ceiling Walls Floors Attic Other: _____	

## CSS INFORMATION FIELD FORM (continued)

Address: 3696 2<sup>nd</sup> St Ext WBE# 001505

Data Item	Value	Notes
<b>INDOOR ASSESSMENT</b>		
Vermiculite Insulation Past or Present	Attic: Yes <input type="radio"/> No <input checked="" type="radio"/> NA <input type="radio"/> Unknown <input type="radio"/> Walls: Yes <input type="radio"/> No <input checked="" type="radio"/> NA <input type="radio"/> Unknown <input type="radio"/> Basement: Yes <input type="radio"/> No <input checked="" type="radio"/> NA <input type="radio"/> Unknown <input type="radio"/> Crawl Space: Yes <input type="radio"/> No <input checked="" type="radio"/> NA <input type="radio"/> Unknown <input type="radio"/> Other: _____	Visual confirmation of current presence or absence required for attic. * Fiberglass throughout. * Cement block foundation. Unable to determine if L.V. present in block.
Evidence of Physical Damage?	Yes <input type="radio"/> No <input checked="" type="radio"/>	
Evidence of Water Damage?	Yes <input type="radio"/> No <input checked="" type="radio"/>	
<b>OUTDOOR ASSESSMENT</b>		
Libby Amphibole Sources Present	Garden: Yes <input checked="" type="radio"/> No <input type="radio"/> NA <input type="radio"/> Yard: Yes <input type="radio"/> No <input checked="" type="radio"/> NA <input type="radio"/> Stockpiles: Yes <input type="radio"/> No <input checked="" type="radio"/> NA <input type="radio"/> Other: _____	* L.V. observed in all front and back yard garden areas. * No L.V. observed in yard areas.
Proximity to Other Properties with Potential Sources of Libby Amphiboles	Next door _____ Within same block _____ Other: <u>NA</u> Unknown _____	

## CSS INFORMATION FIELD FORM (continued)

Address: 3696 2nd St. Ext. W.BD# 001505

Data Item	Value	Notes
<b>EXPOSURE ASSESSMENT</b>		
Type and Frequency of Activity Near Vermiculite Material - Indoor	Frequency: <ul style="list-style-type: none"> <li>Once a day</li> <li>Once a week</li> <li>Once a month</li> <li>Once a year</li> <li><u>Not Applicable</u></li> </ul>	Not Applicable applies when no vermiculite is present on the property.
	Duration of Contact: <ul style="list-style-type: none"> <li>&lt;1 hour</li> <li>1-2 hours</li> <li>2-4 hours</li> <li>&gt;4 hours</li> <li><u>Not Applicable</u></li> </ul>	
	Extent of Contact: <ul style="list-style-type: none"> <li>Heavy</li> <li>Moderate</li> <li>Light</li> <li><u>Not Applicable</u></li> </ul>	
Type and Frequency of Activity Near Vermiculite Material - Outdoor	Frequency: <ul style="list-style-type: none"> <li><u>Once a day</u></li> <li>Once a week</li> <li>Once a month</li> <li>Once a year</li> <li>Not Applicable</li> </ul>	Not Applicable applies when no vermiculite is present on the property • L.V. observed in all front and back yard garden areas. • Resident does own yardwork in addition to daily gardening.
	Duration of Contact: <ul style="list-style-type: none"> <li>&lt;1 hour</li> <li><u>1-2 hours</u></li> <li>2-4 hours</li> <li>&gt;4 hours</li> <li>Not Applicable</li> </ul>	
	Extent of Contact: <ul style="list-style-type: none"> <li>Heavy</li> <li>Moderate</li> <li><u>Light</u></li> <li>Not Applicable</li> </ul>	

CSS INFORMATION FIELD FORM (continued)

Address: 3696 2nd St. Ext W.

BD# 001505

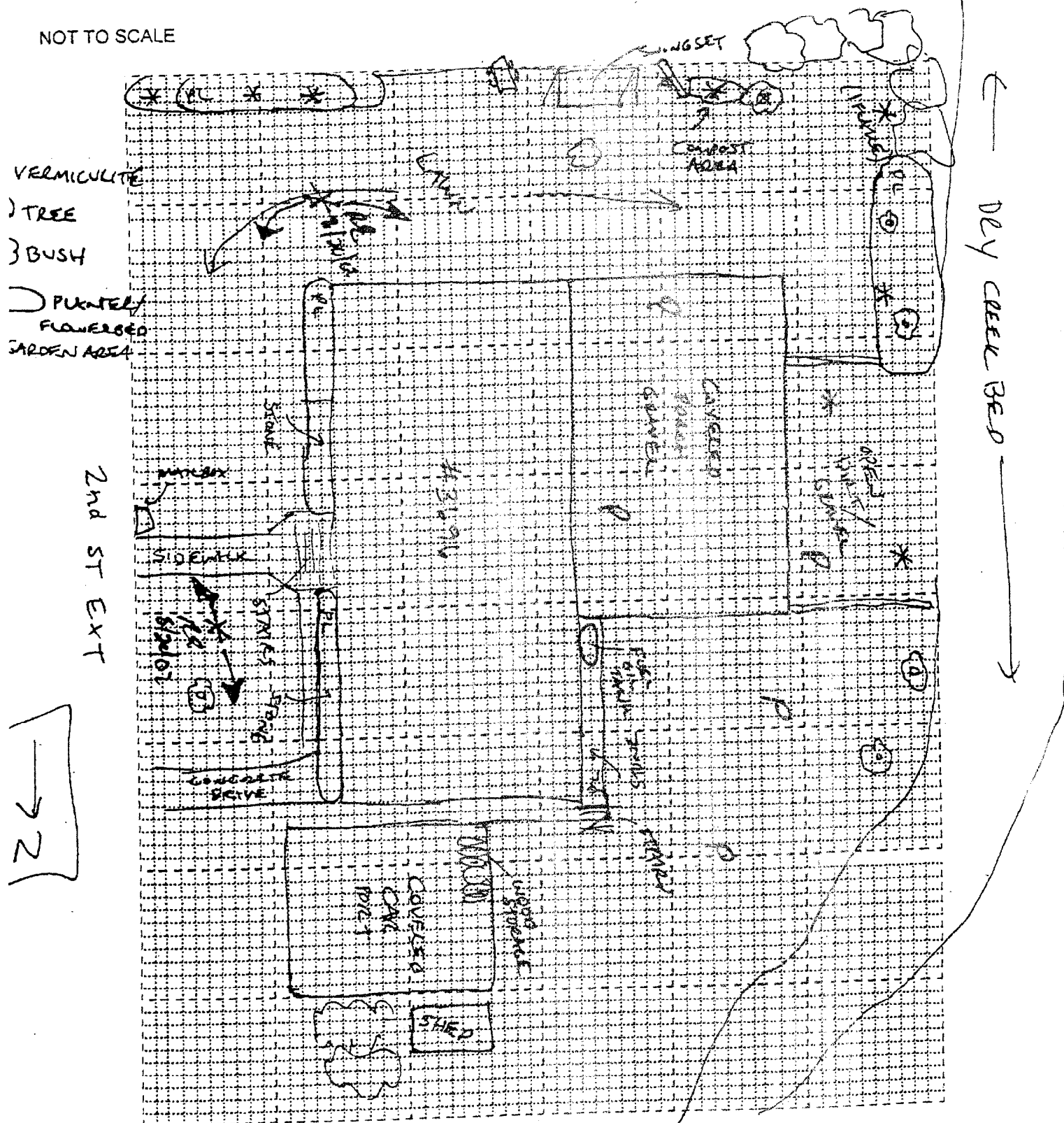
Data Item	Value	Notes
<b>CONTAMINANT SCREENING STUDY ASSESSMENT</b>		
<b>Occupant Information</b>		
Is there any knowledge of former miners, close relative of miners, or any highly exposed persons living or visiting the property?	Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown	
Is the resident, past or present, diagnosed with an asbestos related disease?	Yes <input checked="" type="radio"/> No <input type="radio"/> Unknown	Father worked at mine, resident lived near mine
<b>Indoor Information</b>		
Does the interior have Zonolite attic insulation?	Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown	
Did the interior ever have Zonolite attic insulation?	Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown NA	NA applies if attic currently has ZAI.
Are there vermiculite additives in any of the building materials?	Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown	
<b>Outdoor Information</b>		
Is there any evidence of primary source materials at or near the property?	Yes <input checked="" type="radio"/> No <input type="radio"/> Unknown	
Could this have been tracked indoors or otherwise spread outdoors on the property?	Yes <input checked="" type="radio"/> No <input type="radio"/> Unknown	
<b>Overall Assessment</b>		
Are primary source materials present at the property?	Yes <input checked="" type="radio"/> No <input type="radio"/>	
Where are primary source materials located?	Inside <input type="radio"/> Outside <input checked="" type="radio"/> Both NA	
<b>ADDITIONAL INFORMATION</b> <u>Fiberglass present in both attic and behind walls, no L.V. observed in partially finished basement. Cement-block foundation, unable to determine if L.V. is present in block wall. All garden areas in front and back yard contain L.V. Resident grew up near mine, and his father died of asbestosis.</u>		

Address: 3696 2nd ST EXT W.

BD- 001505

Identify important features (i.e. drainage, trees, gardens, structures, flowerbeds, utility poles, known underground utilities, suspected Libby amphibole source areas, sample locations, etc).

NOT TO SCALE





CSS INFORMATION FIELD FORM (continued)

Address: 3696 2nd ST EXT W

BD# 001505

FIELD DIAGRAM OF PRIMARY STRUCTURE

Floor of House (circle): First Second Third Basement

Include approximate dimensions of rooms and floor covering type. Use more than one diagram if needed. Completed only if ZAI is present.

Scale: 1/10" = 1 foot

NO  
ZAI  
IN  
ATTIC

BD- 001505

SO 8/14/02

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
999 18<sup>TH</sup> STREET SUITE 300  
DENVER, CO 80202

## CONSENT FOR ENTRY AND ACCESS TO PROPERTY

Name: Michael C. WagnerAddress: 3696 2<sup>nd</sup> St Ext. W.Phone: 293 4225

Address of Property for which consent for entry and access is being granted.

Relationship to property: Owner  
(i.e., owner, tenant, etc.)

I, the undersigned, am the owner, their representative, or otherwise control the real property at the location described above. The Environmental Protection Agency (EPA) has requested entry and access to my property pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act as amended (Superfund), 42 U.S.C. 9601 et seq.

I consent to officers, employees, and authorized representatives of the EPA, including their authorized contractors, entering and having continued access to my property for the following purposes:

1. Visually inspecting the property, including the interior and exterior of any home or any other structures on the property;
2. the taking of such soil, bulk, or dust samples as may be determined to be necessary;
3. the taking of actions to mark or temporarily cover exposed vermiculite.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind. I certify that this Consent for Entry and Access is entered into voluntarily and constitutes an unconditional consent and grant of permission for access to the property by officers, employees, and authorized representatives of EPA at reasonable times.

Date

8-14-02

Signature

Michael C. Wagner

Sheet No.: CSS

002100

# CONTAMINANT SCREENING STUDY

## FIELD SAMPLE DATA SHEET FOR SOIL

Scenario No.: NA Field Logbook No: 100099 Page No: 126 Sampling Date: 8/20/02  
 Address: 31096 W. 2nd ST EXT Owner: Michael Wagner  
 Business Name: NA  
 Land Use: (circle) Residential School Commercial Mining Roadway Other ( )  
 Sampling Team: (circle) CDM PES Other Names: R. Rustice, R Roberts

Data Item	Y <sub>1</sub> Sample 1 <u>8/20/02</u>	Y <sub>2</sub> Sample 2 <u>8/20/02</u>	P Sample 3 <u>8/20/02</u>
Index ID	<b>CS- 04792</b>	<b>CS- 04793</b>	<b>CS- 04794</b>
Location ID	<b>SP- 115169</b>	<b>SP- 115170</b>	<b>SP- 115171</b>
Sample Group	<u>Yard</u>	<u>Yard</u>	<u>Patio</u>
Location Description (circle)	Back yard <del>Front yard</del> Side yard Other _____	<del>Back yard</del> Front yard <del>Side yard</del> Other _____	<u>Back yard</u> Front yard Side yard Other _____
Category (circle)	<u>FS</u> FD of _____ Field Blank (lot or equipment)	<u>FS</u> FD of _____ Field Blank (lot or equipment)	<u>FS</u> FD of _____ Field Blank (lot or equipment)
Matrix Type (Surface soil unless other wise noted)	<u>Surface Soil</u> Other _____	<u>Surface Soil</u> Other _____	<u>Surface Soil</u> Other _____
Type (circle)	Grab <u>Comp</u> # subsamples <u>5</u>	Grab <u>Comp</u> # subsamples <u>5</u>	Grab <u>Comp</u> # subsamples <u>5</u>
Sample Time	<u>1150</u>	<u>1200</u>	<u>1210</u>
Top Depth (in.)	<u>0</u>	<u>0</u>	<u>0</u>
Bottom Depth (in.)	<u>1</u>	<u>1</u>	<u>6</u>
Grid, Quadrant, Section	_____	_____	_____
Field Comments	BD-001505 - Large amount of Vermiculite observed during Sampling.	Large amount of Vermiculite observed during Sampling.	<u>8/20/02</u>
	Entered ____ Validated ____	Entered ____ Validated ____	Entered ____ Validated ____

Field Team	Initial
Completed by	<u>RR</u>
QC by	<u>RE</u>

OW  
8/21/02

123

Location 3696 W. 2nd ST. EXT Date 8/20/02

Project / Client Libby Asbestos VolPE EPA Region 8  
Michael Wagner ID 001505

1140 Arrive 3696 W. 2nd ST. EXT. Will  
 Sample front & backyards and  
 gravel patio area. White observed  
 in flowerbeds and driveway. R.  
 Eustice will spray down collection  
 points before sampling. ~~on 8/20/02~~  
 Large amounts of white observed  
 while sampling front backyards.  
 No samples collected. Sample #s  
 are now CS- 04792 SP- 115169

~~VOID~~  
~~on 8/20/02~~

CS- 04793 SP- 115170

~~VOID~~  
~~on 8/20/02~~

Patio	CS- 04794	15171 S
1210	FSDS-002105	03330

1220 Leave site  
 1325 Return from lunch. Collect GPS  
 points. GPS FILE: I7C08302  
 Leave site.

~~on 8/20/02~~

02

Location 3696 2nd St Ext W Date 8-14-02

128

Project Client VOLPE/EPA

05

MICHAEL C. WAGNER (owner) BD-001505

INIT

GLV

GLV

GLV

GLV

GLV

GLV

GLV

GLV

0900-ARRIVE AT SITE. TALK TO MICHAEL C. WAGNER (OWNER). COMPLETE CONSENT FORM AND BD-001505 INFORMATION FIELD

FORM. ASSIGN FIELD FORM BD-001505.

NO LVA IN ATTIC. FIBERGLASS IN ATTIC.

~~NO LVA~~ <sup>NO LVA</sup> 8/14/02. NO LVA OBSERVED IN ROOF

VERMICULITE OBSERVED OUTDOORS IN

PLANTERS/FLOWERBEDS/GARDEN AREA.

SKETCH DRAWN AND PHOTO TAKEN. LEAVE

SITE AT 0945.

*Chavez-Versell*  
8-14-02